

Protest of	)	Date: December 27, 1991
	)	
CARAVELLE INDUSTRIES, INC.	)	
	)	
Solicitation No. 489990-91-A-B386	)	P.S. Protest No. 91-82

### DECISION

Caravelle Industries, Inc. ("Caravelle") protests the award of a contract for an automatic drive-thru vehicle washer system to Rider Car Wash ("Rider"). Solicitation No. 489990-91-A-B386 was issued by the Procurement Service Office in Dallas, TX, on August 12, 1991, using simplified purchasing procedures. The solicitation sought offers for an automatic vehicle washer system on a brand name or equal basis, citing Model# CTV-515 manufactured by N/S Corporation System as the brand name. The offer due date, as amended, was September 16.

The solicitation provided in Section M.1 a., Contract Award, that award would be made "to the responsible offeror whose proposal conforming to the solicitation will be most advantageous to the Postal Service, cost or price and other factors specified elsewhere in this solicitation considered." Section M.2 a. listed, in descending order of importance, the primary areas to be used in determining which proposal was most advantageous to the Postal Service. These areas were:

1. Adherence to specifications - Attachment I - determined for evaluation purposes to be the most important factor.
2. Ability to meet delivery schedule
3. Personnel, Resources and Facilities

Section M.2 b. further stated that "[c]ost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price."

The contracting officer received nine offers in response to the solicitation. After reviewing the proposals, she forwarded three proposals, those of Slant Systems, Caravelle, and Rider, to the San Antonio Vehicle Maintenance Facility ("VMF") for technical review. Caravelle's proposal offered Model No. 2000IT090 vehicle car wash system which it manufactures, while Rider offered the brand name system, Model No. CTV-515, manufactured by N/S Corporation. Based on the information that had been

provided in the proposals, it was determined that Rider's proposal was the only one that met all the requirements of the specifications and satisfied the other evaluation criteria. The contracting officer awarded the contract to Rider on September 18 and informed the other offerors of this action on September 19.

By letter dated September 25, Caravelle timely informed the contracting officer that it protested award of this contract since it had offered "the exact same system" as the awardee at a lower price. By letter dated October 10, the contracting officer denied Caravelle's protest as obviously without merit. Her stated basis for denial was that Caravelle's proposal did not strictly meet all the requirements of the specification. The contracting officer explained that Caravelle's proposal did not satisfy the requirement of cloth scrubbers. The contracting officer further stated that Caravelle had failed to demonstrate its ability to provide adequate maintenance on a present contract with the San Antonio VMF and had not adequately addressed in its proposal the availability of a "local Caravelle representative for parts and repair service" as required by the specifications.

Caravelle subsequently sent a letter, dated October 15, to the contracting officer expressing its "rejection" of the contracting officer's decision and its disagreement with the contracting officer's finding that its system did not meet the specifications. Caravelle argued that the Postal Service should have clarified any uncertainty surrounding its system before making award and requested more information concerning the award of this contract and the administrative appeals that were available to it. By letter dated October 31, the contracting officer addressed each of Caravelle's concerns and provided the information that had been requested. On November 15, this office received a protest from Caravelle.

In its protest, Caravelle asserts that the procurement process under this solicitation was unfair. It states that although it has followed all the instructions it has received from the Dallas office, it doesn't believe that the Dallas office has properly or fairly addressed all its concerns regarding this procurement. Finally, Caravelle declares that it objects "to having to pay taxes to support a system that will not even let [it] bid on jobs for [its] own government."

In her report to this office, the contracting officer reiterates the basis for her decision to deny Caravelle's initial protest. Although Caravelle's proposal was lower in price, it failed to address and satisfy all the specification requirements. The contracting officer also provides us with comments from the VMF personnel who conducted the technical review which note all the differences between the specifications in the solicitation and specifications in Caravelle's proposal.

In its comments to this protest, Curtis Car Care Equipment Co., an unsuccessful offeror, states that it agrees with the protester's claim that the contract should be awarded to the lowest offeror.

### Discussion

Although no party to this proceeding has addressed the issue of timeliness, we may do so ourselves because it affects the jurisdiction of our office to adjudicate Caravelle's assertions. Coopers & Lybrand, P.S. Protest No. 89-91, March 21, 1990. The requirement that a protest be timely filed is jurisdictional and cannot be waived.

Alabama Metal Products, Inc., P.S. Protest No. 91-20, May 7, 1991. International Jet Aviation Services, P.S. Protest No. 87-36, September 1, 1987.

Procurement Manual (PM) 4.5.4 e. provides that if a protest has been filed initially with the contracting officer, this office will consider any subsequent protest as long as it is filed within "ten working days of the protester's formal notification of, actual knowledge of, or constructive knowledge of initial adverse action by the contracting officer . . . provided the initial protest was [timely] received . . . ." In this case, although Caravelle's initial protest to the contracting officer was timely, its protest to this office was not. Caravelle was notified by letter dated October 10 that its initial protest was denied as obviously without merit. By disputing the contracting officer's decision in a letter dated October 15, Caravelle implicitly acknowledged that it had received formal notification of initial adverse action by the contracting officer by that date. To be timely, Caravelle's protest would have had to be received in our office by October 29. Since Caravelle's protest was not received by this office until November 15, it is untimely and cannot be considered on its merits. L & J Transportation Inc., P.S. Protest No. 91-42, August 29, 1991.

The protest is dismissed.

**[Signed]**

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[Compared to original 5/18/95 WJJ]**